Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
Modernizing the E-rate	)	
Program for Schools	)	**WC Docket No. 13-184**
and Libraries	)	

INITIAL COMMENTS BY THE FLORIDA DEPARTMENT OF MANAGEMENT SERVICES DIVISION OF TELECOMMUNICATIONS REGARDING FURTHER NOTICE OF PROPOSED RULEMAKING SET FORTH IN FCC ORDER 14-99

September 15, 2014

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I. Introduction

The Florida Department of Management Services (DMS), Division of Telecommunications (Division), respectfully submits these initial comments in response to the Report and Order and Further Notice of Proposed Rulemaking (Report/FNPRM) to modernize the Universal Service Schools and Libraries Program, commonly referred to as "E-rate."[1] The purpose of these comments is to specifically address the proposed five-year term limit on multi-year contracts as it applies to the Division's state master E-rate contract.

II. Comments

A. The Proposed Five-Year Term Limit

In paragraph 271, the Commission proposes "to limit E-rate support to eligible services purchased under contracts of no more than five years, including voluntary extensions." The stated purpose of this limitation is "to promote cost-effective purchasing." The proposed five-year limit is intended "to balance the advantages that longer term contracts give applicants against the opportunity that shorter term contracts give applicants to take advantage of rapidly falling prices in a dynamic marketplace."

The Commission already recognizes that any blanket rule limiting the length of a multi-year contract is in some sense arbitrary and potentially over-inclusive[2], i.e., that the application of the rule will unavoidably render ineligible contracts that should be accepted. Thus, the Commission would not apply this rule to "contracts that require large capital investments to install new facilities expected to have a useful life of 20 years or more."[3] The Commission also recognizes that there may be "other ways to achieve our goal of ensuring that schools and libraries can take advantage of falling prices."[4] The

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[1] *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, FCC 14-99, Report and Order and Further Notice of Proposed Rulemaking (released July 23, 2014) (hereinafter referred to as "FNPRM").
[2] See e.g., FNPRM para. 271
[3] FNPRM para. 274
[4] FNPRM para. 275.

Commission clearly wants to avoid rejecting multi-year contracts that are in the public interest.[5] Thus, in paragraph 272, the Commission "invite(s) commenters to revisit the issue of maximum contract length, and . . . (to) comment on the benefits and drawbacks of our new proposal."

B. **The SUNCOM State Master Contracts**

The Division serves Florida government by providing voice, data, and conferencing services at the enterprise level under the brand name SUNCOM. The Division's goal is to reduce costs and minimize unnecessary usage of telecommunications services by State of Florida agencies. It achieves this by leveraging economies of scale, volume discounts, reducing vendor costs and risks, pooling services, and providing focused expertise to obtain the best overall value to the state. Using product design, cost accounting techniques, and a robust inventory/billing system, the Division brings transparency, accountability, and incentives to motivate and empower government customers to save.

SUNCOM customers obtain services through various SUNCOM state master contracts. Under each of the SUNCOM state master contracts, the service provider bills the Division and the Division, in turn, bills the customer pursuant to an individual contract. Although the duration of these individual state contracts vary, individual customer commitments are month-to-month. Currently 66 of the 67 Florida school districts and two of the special administrative districts applied for E-rate discounts for internet access services statewide for the 2014-15 funding year. Furthermore, SUNCOM offers eligible services through 21 state master contracts. Consequently, under section 282.704-706 Florida Statutes, 4,426 public schools and 514 public library sites are eligible to purchase through SUNCOM contracts.

C. The MFN-2 State Master Contract

SUNCOM offers a statewide enterprise data network based on current technology and stringent quality of service standards. On June 6, 2014, the Division issued an Invitation to Negotiate (ITN) to establish the successor to the existing data network contracts, to be known as *MyFloridaNetwork-2*

[5] FNPRM para. 276.

Services (MFN-2)[6]. The multi-year strategic partnership resulting from the ITN will reduce the cost of services and increase the long-term value to the State. As contemplated by the business case for the ITN,[7] the MFN-2 state master contract will be the primary vehicle under which schools and libraries obtain eligible services. Consequently, great care was taken to ensure that the resulting MFN-2 state master contract is compliant with all FCC requirements for E-rate eligibility.[8]

D. MFN-2 State Master Contract: Meeting the Goals Expressed in the Proposed Rule

The initial term of the MFN-2 state master contract will be seven years, with the option to renew for an additional seven years in one year increments. The pricing of the E-rate eligible services, however, will be year-to-year based on competitive benchmarks, with no increase in price for any service for the duration of the contract. Thus, the resulting MFN-2 state master contract will provide schools and libraries a state-of-the art portfolio of eligible services with year-to-year "best" prices.

With respect to pricing, however, the contract requires annual adjustment of rates to ensure they remain competitive[9] and that E-rate customers will be able to avail themselves of potentially cheaper services when the cost of technology declines. In addition, the contractor must comply with 47 CFR Part 54 to ensure that services receiving E-rate support are billed at the lowest corresponding price applicable to comparable services.[10] Further, section 2.3.8 of the Statement of Work in the MFN-2 ITN provides for a technical refresh of all MFN-2 components and features (e.g., access services, access technologies, daily operations, tools, billing, NOC, hardware, software, security, monitoring, QoS, traffic

[6] http://www.myflorida.com/apps/vbs/vbs_www.ad_r2.view_ad?advertisement_key_num=115568
[7] ITN NO: DMS-13/14-024, Attachment G MyFloridaNet-2 Business Case Version 4.1
[8] For example, on August 29, 2014, DMS issued an amendment to ITN NO: DMS-13/14-024 to reflect a change in the E-rate requirements as mandated by the Commission in the Order referenced. As a result, the due date for responses was extended from September 3, 2014, to October 1, 2014.
[9] ITN NO: DMS-13/14-024, Attachment B, Section 3.B. Pricing Adjustments.
[10] *Id.*

engineering, etc.) with no extra cost to its customers[11]. See Exhibit A and B for excerpts of the contractual language and statement of work within the MFN-2 ITN.

Schools and libraries are optional SUNCOM customers, i.e., they may procure E-rate eligible services through SUNCOM, but are not required to do so per F.A.C. 60FF-1.003. As previously noted, if a school or library does procure eligible services through the MFN-2 state master contract, the term of its individual contract with the Division will be month-to-month. Consequently, each year these E-rate eligible customers will have the benefit of the MFN-2 state master contract's yearly adjusted competitive prices *and* the opportunity to choose another service provider if its services and prices are more compelling. In short, with respect to pricing, the resulting MFN-2 state master contract will not lock the schools and libraries into long term, non-competitive pricing, but rather guarantee these E-rate eligible customers the best available pricing each and every year.

The proposed five year term limit, while being an understandable attempt to balance the advantages between multi-year contracts and the ongoing opportunity to purchase at current prices in a declining cost industry, could actually exclude the long-term state master contracts that include the ability to re-price services during the life of the contract. This result, however, is clearly not desirable given the goals espoused in paragraph 271. The proposed five-year term limit is intended to assure that multi-year contracts are economically efficient. As evident from the anticipated MFN-2 master contract, our structure achieves the economic efficiency outlined in paragraph 271 which does not involve limiting the term of a contract. In other sections of the FNPRM, the Commission encourages multi-year master contracts.[12]

Documentation and data analysis that support the proposed five-year term limit was not released with the FNPRM. Thus, although the proposed rule entails a difficult balancing act, it is not

[11] ITN NO: DMS-13/14-024, Attachment A, Statement of Work, Section 2.3.8., Administrative Support and Technical Refresh.

[12] *See, e.g.,* FNPRM para. 170 (preferred master contracts) and para. 285 (encouraging consortium participation).

clear on what factual basis this policy reflects. What is clear, however, is that the application of the five-year term limit to disqualify the MFN-2 state master contract could deny the efficiencies the Commission seeks to promote. Indeed, the stated motive for adopting the proposed contract term limit – promoting efficient, competitive pricing for E-rate eligible services - promotes acceptance of the MFN-2 state master contract.

Assuming that the Commission does adopt the five-year term limit as a rule, there would be potentially thousands of schools and libraries adversely affected if lengthy state master contracts with re-pricing mechanisms were disqualified. For example, in Florida alone, more than 4,940 E-rate eligible entities would not be able to use the MFN-2 state master contract for competitively priced eligible services. This would both limit the ability of schools and libraries to take advantage of bulk pricing and increase their administrative costs in seeking E-rate support.

V. Conclusion

The Division supports the objectives of ensuring that multi-year contracts are efficient. The MFN-2 state master contract combines the advantages of a longer term (seven years initially) with the benefits of year-to-year competitive pricing; it delivers the very result the proposed rule purports to promote.

More generally, the proposed term limit seems likely to produce at least three unfavorable results: (1) it could render ineligible existing long-term state master contracts even where they already provide for short term competitive pricing; (2) even though the rule is intent on saving money, it could eject many schools and libraries from current long term contracts, impairing their ability to receive E-rate support while increasing administrative costs of the program; and (3) even though the rule is purportedly based on a desire to promote better pricing, it could discourage the development of more efficient and better priced state master contracts the Commission intends to encourage.

Rather than move forward with the term limit concept, the Division recommends that the Commission fashion a balancing mechanism that focuses *directly* on the assured availability of current, competitive pricing throughout the life of multi-year E-rate contracts.

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Exhibit A

Contract Language, MyFloridaNet - 2 Contract No. DMS-13/14-024, Florida Department of Management Services

3. Payments

A. Pricing

The Contractor shall adhere to the prices as stated in the Price Workbook, Attachment E, which are incorporated by reference into the Contract.

B. Price Adjustments

1) To ensure the Department continues to receive competitive market pricing, at the end of each twelve (12) month period of the Contract the Contractor shall be required to provide benchmark data to the Department that contains the following:

> **a)** A comparison of the Department's rates for all services against rates contractually provided to other states, enterprises, and commercial entities for substantially the same or a smaller quantity of services and similar terms as this Contract.
>
> **b)** A comparison of the following on an individual basis:
>
> - Services and components for each bandwidth speed as defined in the Price Workbook, Attachment E.
> - Equipment percentage discount off of the Manufacturer's Suggested Retail Price (MSRP) List.
> - Other Network and Telecommunication Services defined in the Price Workbook, Attachment E.

2) The Parties will, through an Amendment, adjust the Contract rates, pricing, charges and/or discounts, as appropriate, to make the Contract rates comparable to the benchmark's best rates. Rates shall not be increased for the duration of the contract, regardless of the result of any benchmark.

3) Pricing and rate reductions shall not be based on averages; rates shall be compared and reduced based on benchmark data on a bandwidth by bandwidth basis.

4) The Contractor may also reduce rates and pricing outside the process of benchmarking.

5) The Contractor will comply with 47 CFR Part 54, including but not limited to not charging schools, school districts, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services.

6) The Department reserves the right to further negotiate reductions in pricing for the renewal years.

7) The Contractor shall submit invoices for services in detail sufficient enough for a proper pre-audit and post-audit. The Department reserves the right to request additional documentation. In addition, Contractor shall comply with the terms and conditions set forth in Attachment A, Statement of Work, Section 2.6 Business Operations - Requirements.

Exhibit B

Statement of Work Language, MyFloridaNet - 2 Contract No. DMS-13/14-024, Florida Department of Management Services

2.3.8

Administrative Support and Technical Refresh: The Contractor must commit to an ongoing refresh process for the life of the contract as an inherent feature of MFN-2 with no extra cost to DMS or its customers.
Describe the proposed administrative support and technical refresh process that incorporates the following. Include charts and other descriptive information to provide the following:

- **a.** The refresh process is to span all MFN-2 components and features (e.g., access services, access technologies, daily operations, tools, billing, NOC, hardware, software, security, monitoring, QoS, traffic engineering, etc.).
- **b.** Include proposed timeframes for meeting the refresh requirements.
- **c.** Refresh will take place at the discretion of DMS and its customers.
- **d.** Refresh will commence as needed to ensure all MFN-2 service levels are continually met, that full Contractor and Original Equipment Manufacturer (OEM) support is continuously available, and DMS receives new features in a timely fashion.
- **e.** Refresh is needed to mitigate software dependency challenges for MFN-2 customers that would affect their ability to use MFN-2 tools or ability to migrate to a new application due to interdependencies. An example would be if MFN-2 tools require Java version 5, and the customer's timesheet data entry application required Java version 7, there is a dependency issue.
- **f.** All features and functionality will be supported completely for the initial term and any renewal term of the contract.
- **g.** The core and CPE software suite will be refreshed to N-1 of the current major point software as long as the result will not have an undesirable impact on DMS or its customers.
- **h.** In the proposed refresh process define the strategy, including a specific timeframe, for providing upgrades once equipment is declared end-of-life by the OEM; and address upgrading all equipment (hardware and software) before the end of life deadlines declared by the OEM. There is an SLA associated with this requirement described in the SLA matrix.

i. While standard CPE packages proposed in the Price Workbook, Attachment E, are to be finalized in the contract development process and as part of roadmap updates, equivalent functionality will be maintained for the life of the MFN-2 service; the roadmap will evolve.

j. Administrative and technical support within the Contractor's organization is required for numerous MFN-2 related tasks. For refresh, these support requirements include project management tasks related to field-refresh services to address CPE change-out. Field-refresh shall be accomplished to meet DMS, customer and SLA requirements. CPE change-out support is required for both end-of-life and situations where the customer wants to change CPE for any reason. Project management and field support resources will be augmented to meet these normal, but infrequent, change-out tasks.
In the refresh plan outline how to deal with the need to augment both project and field staff to address change-out tasks.

k. For CPE under maintenance, software and hardware refresh will occur to:

   1) Rectify a bug causing a service impact;

   2) Support any new service which requires a new feature; and,

   3) Ensure full Contractor support from the CPE manufacture.